Supreme Court, U.S.
FILED

(1)

97 907 NOV 28 1997

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1997

IN RE JAMES LEE MARTIN,

Petitioner.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

PETITION FOR A WRIT OF CERTIORARI AND APPENDIX

JAMES LEE MARTIN
Counsel of Record
912 McCabe Avenue
Wilmington, DE 19802
(302) 652-3957

DATED: November 28, 1997

23 pp

ISSUES TO BE PRESENTED

A. May a United States Court of Appeals decide a case or controversy with only one judge?

B. May a single judge on a United States Court of Appeals "revoke" an attorney's admission to its bar, without a hearing, under the guise of a clerical mistake, after two admissions clerks reviewed the application for admission, after the attorney had been in good standing for two (2) years, with an unblemished lifetime record, and after the attorney requests a hearing but is denied a hearing?

C. Is a bar admission a judicial act, and not merely a ministerial or an administrative one?

D. Is a decision from the state court, about whether an attorney is admitted or not, binding on a United States Court of Appeals?

E. Is this Court's portrait of long-standing attorney James Lee Martin as a frivolous, malicious, and notorious abuser of the certiorari process hollow, preposterous, and malicious?

TABLE OF CONTENTS

Page

OPINIONS BELOW, AND STATEMENT OF THIS COURT'S JURISDICTION 1

AUTHORITY RELIED UPON 1

STATEMENT OF THE CASE 1

REASONS THE WRIT SHOULD BE GRANTED 4

A. The Court of Appeals for the Federal Circuit may not resolve a case or controversy with only one judge 4

B. The Court is without authority to "revoke" an attorney's admission to its bar, but may suspend or disbar an attorney "after hearing, if requested." 5

C. A bar admission is a judicial act, not merely a ministerial or administrative one, so that a court's decision to admit an applicant to the bar is subject to neither revocation nor to nullification, without due process, and that means, without a prior hearing, if one is requested in advance 5

D. A decision from the state court, about whether an attorney is admitted or not, is not binding on the federal courts 5

E. This Court's portrait of long-standing attorney James Lee Martin as a frivolous and notorious abuser of the certiorari process has been debunked as hollow, preposterous, and malicious 7

TABLE OF AUTHORITIES

Page

CASES

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 5

In re Summers, 325 U.S. 561 (1945) 5

Selling v. Radford, 243 U.S. 46 (1916) 6

Theard v. United States, 354 U.S. 278 (1956) 5

Yohn v. Love, et al., 887 F. Supp. 773 (ED Pa. 1995) 7

STATUTES

18 U.S.C. Sec. 1964 6

28 U.S.C. Sec. 1254(1) 1

F.R.A.P. 46(b) 1, 5

Fed. Cir. Rule 47.2(a) 4

OPINIONS BELOW, AND STATEMENT OF THIS COURT'S JURISDICTION

The judgment sought to be reviewed was issued on 6-20-97, at Ex-1a to 7a, and the petition for rehearing, and suggestion for rehearing *en banc*, were denied on 8-1-97, at Ex-8a to 9a. The period for seeking review was extended to 11-29-97. This Court's jurisdiction for review is at 28 USC Sec. 1254(1).

AUTHORITY RELIED UPON

F.R.A.P. 46(b) *Suspension or disbarment.* " . . . after hearing, if requested, . . . "

STATEMENT OF THE CASE

Basis for federal jurisdiction in the court below. The Court of Appeals has original jurisdiction pursuant to F.R.A.P. 46(b), but only upon proof that an attorney is "guilty of conduct unbecoming a member of the bar of the court."

Facts. On 4-10-97, in an *ex parte*, two-page letter, Daniel Carter, an attorney "Admitted Only in Pennsylvania," but whose only office is in Cleveland, Ohio, and who has been purporting to represent Edward C. Smith, a private litigant, in "a long series of twisted and bizarre cases that began years ago," wrote to Ms. Gay Schular, a Deputy Clerk at the respondent Federal Circuit:

> "I spoke to a gentleman in your office who suggested I write you to inquire as to what

> documentation James Lee Martin based or represented to the Clerk of the United States Court of Appeals that he was a member in good standing of any bar and if you could please inform me of this."

Because neither Mr. Carter nor the respondent Court forwarded a copy of this document to me, I did not see it until a member of the public accessed it with my written authorization, and sent it to me on 11-8-97. The Chief Judge for the Federal Circuit, acting alone for unknown reasons, accepted this 4-10-97 letter without reservation, oblivious to the status of Carter, its author, an attorney in Philadelphia years ago. Carter's status raises questions about the unauthorized practice of law: Carter is not admitted to practice law in Ohio, but that is where his *only* law office is, and he does not disclose on his letterhead that he is not authorized to practice law in Ohio.

I requested a hearing in these terms, which appear in my "Answer to Order to Show Cause," filed with the Federal Circuit on 5-13-97, in para. 24, p. 7: " . . . I request a hearing, with the customary requirements of due process." The respondent court ignored my request.

On 7-8-97, I reapplied to the Federal Circuit, and relied upon a Certificate of Good Standing from the US District Court for the District of Hawaii. The Admissions Clerk in Hawaii referred my application for admission to a judge, after I provided a detailed affidavit to explain the reasons I was no longer active in any state bar. Several weeks later, a judge in the US District Court for the District of Hawaii, but not the Admissions Clerk there, admitted me to practice law. A Federal Circuit bar admission may be based upon an admission to a US Court of

Appeals or to a US District Court, and is not restricted to those admitted and currently active in a state court of last resort.

Federal Circuit Chief Deputy Clerk of Operations Pamela J. Twiford returned my renewed application, my check for the admission fee, and my Hawaii Certificate of Good Standing upon which my renewed application was based with a letter dated 7-28-97:

> "The [respondent] Court issued an order on June 20, 1997 revoking your membership to the bar of this court. Your application for membership and check in the amount of $25.00 are being returned."

Edward C. Smith, the private litigant Carter purported to represent in ongoing litigation with me in the US Court of Appeals for the Third Circuit (pending at No. 97-1572), interfered with my standing in the state bar (from his own affidavit), disparaged my character in the printed news media, and colluded with other scoundrels, so I am enjoining his pattern of fraud, deceit, misrepresentation, discrimination, invasion of privacy, breach of confidentiality, spoliation of evidence, and civil rights violations. His success with avoiding liability, to date, for his gross misconduct depended on Joseph Farnan, a liar on the federal bench in Delaware, who protected Smith and his ilk for many years while purporting to preside over the related cases I filed against Smith and the Law School, until I coincidentally discovered evidence to document the federal judge's lying about his association with and paid employment at the Delaware Law School where Smith also worked and where the case arose (hence Smith's liability for civil rights violations – nexus with

state and federal judges). Thereafter, I removed the lying federal trial judge for cause. His "decisions" are nullities, even though the respondent Court sought to accord said decisions full effect.

The respondent court then removed my name from the list of attorneys admitted to practice before the Federal Circuit, even though it was actually patronizing a private litigant in another court on an *ex parte* basis: Edward C. Smith. Because I was admitted to the state bar, and because I was neither suspended nor disbarred from the state bar, the other US Courts of Appeals, and other courts, recognized my standing in the state bar as the basic prerequisite for admission to the US Tax Court over ten (10) years ago, and then to all of the other federal appellate bars, after my disclosure of my lack of current standing in any state bar to some of the federal appellate bars (those who asked).

REASONS THE WRIT SHOULD BE GRANTED

A. The Court of Appeals for the Federal Circuit may not resolve a case or controversy with only one judge.

According to Rule 47.2(a) of the RULES OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, entitled "Panels," a case, like the one *sub judice*, is not to be ruled upon by only one judge: "Cases and controversies will be heard and determined by a panel consisting of an odd number of judges ***not fewer than three,*** [emphasis added]. . . . " Because only one judge presided, the "decision" is a nullity, and void *ab initio*.

B. The Court is without authority to "revoke" an attorney's admission to its bar, but may suspend or disbar an attorney "after hearing, if requested."

Rule 46 governs eligibility for admission to the bar, as well as suspension or disbarment. No provision appears anywhere for "revocation," a transparent ploy to deprive an attorney of the safeguards supposed to be afforded during a "hearing, if requested." FRAP 46(b) and (c). I requested a hearing, but the Court ignored my request.

C. A bar admission is a judicial act, not merely a ministerial or administrative one, so that a court's decision to admit an applicant to the bar is subject to neither revocation nor to nullification, without due process, and that means, without a prior hearing, if one is requested in advance.

This rule of law is in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 477 (1983), and based upon *In re Summers*, 325 U.S. 561 (1945). Here, the principles governing bar admission are irrelevant, and those governing disbarment control. The respondent purported to fictionalize the case as one for attorney admission, even though at that time, I was already admitted and in good standing about two (2) years.

D. A decision from the state court, about whether an attorney is admitted or not, is not binding on the federal courts.

Theard v. United States, 354 U.S. 278 (1956). The state court decision is entitled to deference unless: (1) the state

did not provide notice and an opportunity to be heard; (2) the proof of facts for the "want of fair private and professional character" were so infirm the court should not accept the state's decision; or (3) another grave reason prevents fair recognition of the state's decision. *Selling v. Radford*, 243 U.S. 46, 51 (1916).

The state procedure by which my standing in the Pennsylvania and New Jersey state bars was "revoked" afforded neither (1) notice nor opportunity to be heard; (2) nor allegations of any misconduct on my part. The state determinations resulted from these state courts' customary *modus operandi*, whose judges were subsequently exposed or ousted, or both, for their criminal corruption. For the PA state judicial system, upon which NJ expressly relied, see the "Petition for Disqualification and Recusal of Justice Stephen A. Zappala and Justice Ralph J. Cappy," filed and served on 11-24-92, at IN THE MATTER OF THE HONORABLE ROLF LARSEN, JUSTICE, PENNSYLVANIA SUPREME COURT, No. 155 JIRB Dkt. 1992, in the PA Supreme Court, E. D., and see 18 U.S.C. Sec. 1964 (the RICO statute). This evidence relates the corrupt PA justices to a "RICO" enterprise. Convicted felon and PA Supreme Court ex-Judge Larsen's land transaction with convicted felon Nikolai Zdrale, who "was convicted by a jury of criminal solicitation and conspiracy in a plot to murder a certain employee of the Department of Environmental Resources (DER)," and Judge Cappy's efforts to exploit and to patronize felon Zdrale through Elias J. Hakim, Jr., to carry out an illegal scheme, allegedly to defeat Larsen's prospects for re-election to the PA Supreme Court, shows the true character of that court. Disgraced and prematurely retired ex-

Chief Judge Nix's "improper interference in Yohn's felony trial resulting in his conviction [for second degree murder]. . . . " verified said court's essential reputation. Federal Judge Newcomer, in *Yohn v. Love, et al.*, 887 F. Supp. 773 (ED Pa. 1995), accurately described the background to disclose the machinations of the PA Supreme Court, whose judges' misconduct paralleled the methods disgraced ex-Judge Nix orchestrated incident to my application for admission to the state bar there, then exported to DC, NJ, MD, VA, and DE. The Third Circuit affirmed the trial court's granting of the writ of habeas corpus in *Yohn v. Love, et al.*, 76 F.3d 508 (3rd Cir. 1996). Judge Larsen even accused Judge Zappala of attempted vehicular homicide – of trying to run over him with a speeding car. Also see "Petitioner's Rule 30 Application to Chief Justice William Rehnquist for Further Extension of Time," filed here on 11-17-97, at A-283, for written proof of the Pennsylvania Supreme Court's appointees' lies about me.

E. This Court's portrait of long-standing attorney James Lee Martin as a frivolous and notorious abuser of the certiorari process has been debunked as hollow, preposterous, and malicious.

Deputy Clerks Vasil and Lorson claimed "an order revoking bar membership is civil in nature." No authority exists for "revoking" a bar membership, anywhere. Before the court below fabricated the matter *sub judice*, disbarments were "quasi-criminal." This Court's attempts to deny my access to this institution for redress, and to excuse and to cover up the criminality of the judges

below, through the artificial denomination of an essentially criminal proceeding, albeit one without any underlying crime, to be "civil in nature," have failed. The writ should therefore be granted to restore my bar membership, and to vacate the hollow but vicious-sounding, fictitious, petitioner-specific, prior portrait.

Respectfully submitted,

JAMES LEE MARTIN

United States Court of Appeals
for the Federal Circuit

MISCELLANEOUS NO. 510

IN RE JAMES LEE MARTIN
(an attorney admission matter),

Respondent.

Before ARCHER, *Chief Judge.*

ORDER

(Filed June 20, 1997)

James Lee Martin submits a response to the court's April 29, 1997 order that directed Martin to inform the court whether he is a member of a state bar or is admitted to practice before the highest court of a state and, if Martin is not such a member, to show cause why his membership in this court's bar should not be revoked. The court now considers whether Martin's membership should be revoked.

BACKGROUND

In 1995, Martin routinely gained admission to this court's bar on motion by filing an application for admission to the bar pursuant to Fed.Cir.R. 46.[1] Martin's admission was based on a certificate of good standing issued by

---

[1] The application process for admission to federal courts is generally pro forma and does not involve the screening of an applicant beyond a review of the applicant's written submissions. *See* Fed.R.App.P. 46(a).

the United States Tax Court on April 6, 1995. The certificate of good standing informed the court that Martin had been admitted to the Tax Court's bar on April 2, 1984. Martin's admission to the Tax Court's bar was premised on "a signature card and a certificate of good standing from the New Jersey Board of Bar Examiners [issued] in March of 1984." *Martin v. Townsend*, No. Civ. 90-2626 (CSF), 1990 WL 135546, at *1 (D.N.J. Sept. 19, 1990).[2]

In April 1997, this court was informed by the Supreme Court of Pennsylvania that Martin had brought suit against that court and its Board of Law Examiners concerning Martin's attempts to gain admission to the Pennsylvania state bar. Martin apparently contends in his action that because he has now been admitted to the bars of all of the United States courts of appeals, the Supreme Court of Pennsylvania must admit him to the state bar. The basis for Martin's admission to each of the federal bars appears to be the certificate of good standing issued by this court. Because it became apparent that in all likelihood Martin was not admitted to the New Jersey state bar or any other state bar, this court directed Martin to inform the court whether he is a member of a state bar

---

[2] For additional background concerning the circumstances of Martin's efforts to gain admission to the bar, the court refers the reader to the following: *Martin v. Court of App. of Md.*, No. 88-1749, 1989 WL 21402 (4th Cir. Mar. 7, 1989); *Martin v. Walmer*, No. Civ.A. 90-2752, 1990 WL 145759 (E.D.Pa. Sept. 26, 1990); *Martin v. Delaware Law School of Widener Univ.*, 625 F.Supp. 1288 (D.Del.1985); and *Martin v. Widener Univ. School of Law*, No. Civ.A. 91C-03-255, 1992 WL 153540 (Del. Super. Ct. Aug. 29, 1991).

and, if not, to show cause why his membership in this court's bar should not be revoked.

Martin does not dispute the following essential facts underlying his standing as an attorney admitted to practice law before a state bar, or the lack thereof, and the circumstances surrounding the issuance of the certificate of good standing by New Jersey. In 1983, Martin applied for admission to the bars of District of Columbia, Pennsylvania, and New Jersey. He later applied for admission to the Maryland state bar. In each instance, Martin passed the written portion of the respective bar examination.[3] However, the highest courts of Pennsylvania, Maryland, and the District of Columbia did not admit Martin because of concerns surrounding Martin's moral character and fitness to practice law. *See Widener Univ.*, 1992 WL 153540, at *22; *Court of App. of Md.*, 1989 WL 21402, at *1.

Although the circumstances are somewhat unclear, Martin was informed in March, 1984 that he had successfully completed the New Jersey bar examination and would be admitted to the state bar. *See Townsend*, 1990 WL 138546, at *1. Martin later received a certificate of good standing from the Supreme Court of New Jersey dated April 25, 1984 that indicated that Martin had been admitted to the practice of law on April 2, 1984. *See id.* Within a

---

[3] Martin also applied for admission to the Virginia state bar, but he failed to pass the written examination on his first attempt. Apparently, Martin was "informed that before he could retake the exam, serious questions concerning his character would have to be resolved." *Court of App. of Md.*, 1989 WL 21402, at *1. Although it is unclear whether Martin sat for a reexamination, it is clear that Martin is not admitted to the Virginia state bar.

month's time, New Jersey informed Martin that he was not admitted and that the issuance of the certificate of good standing was in error. According to the United States District Court for the District of New Jersey, although the New Jersey Board's Committee on Character

> had not yet resumed its investigation nor reached a decision with regard to Mr. Martin's fitness to practice law, [Martin] received a signature card and a certificate of good standing from the New Jersey Board of Bar Examiners in March 1984. Clearly, both documents were sent in error, as the Committee had never certified Mr. Martin. Upon realizing that an error had been made, by letter on April 30, 1984, the Board so informed plaintiff and requested a return of the certificate. [Martin] promptly complied with the Board's request.
>
> In the meantime, [Martin] had used the certificate to get a license from the United States District Court for the District of New Jersey and a license from the United States Tax Court in Washington, D.C.

Id. With this factual background, the court now considers whether Martin's membership in this court's bar should be revoked.

DISCUSSION

The authority of a United States court of appeals over matters concerning the administration of its bar is well recognized. "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28

U.S.C. § 1654 (1994). *See also In re Evans*, 834 F.2d 90, 90-91 (4th Cir.1987) (court of appeals has authority to conduct disciplinary proceedings against members of its bar). Although federal and state judicial systems enjoy autonomous control over the administration of those who wish to appear before them as attorneys, *see In re Ruffalo*, 390 U.S. 544, 547 (1968); *Theard v. United States*, 354 U.S. 278, 282 (1957), membership in a state bar or admission to practice before the highest court of a state has long been a prerequisite to initial admission to the bar of a federal court. *See* Fed.R.App.P. 46(a). The absence or loss of membership in a state bar may "absolutely destroy the condition of fair private and professional character, without the possession of which there could be no possible right to continue to be a member" of a federal bar. *Selling v. Radford*, 243 U.S. 46, 50 (1917). *See also In re Reinstatement of Leaf*, 41 F.3d 281, 284 (7th Cir. 1994) (under local rule, attorney suspended by state's highest court must also be suspended from bar of United States district court). Thus, in order to gain admission to a court of appeals in the first instance, an attorney must also be admitted to practice before, inter alia, "the highest court of a state." Fed.R.App.P. 46(a).

It is undisputed that Martin has not been admitted to the New Jersey state bar or any other state bar. Undeterred by his status as a non-attorney, Martin raises several arguments in defense of his membership in this court's bar, all of which are without merit. In response to the court's April 29, 1997 order, Martin contends that he

> was admitted to the Supreme Court of New Jersey on April 2, 1984, evidenced through my Certificate of Good Standing. . . . I have neither

> been suspended nor disbarred from that Court; however, the Clerk issued a letter to me that my admission was the result of their mistake. I later learned that no mistake occurred, and the attempt to interfere with my good standing before the state bar resulted from official corruption.

Martin thus concedes that the New Jersey Board notified him that his admission was a mistake and that the certificate of good standing was issued in error. Martin's statement that he has never been suspended or disbarred by New Jersey, while true, avoids the obvious. Further, he appears to claim that certain state officials conspired against him in order to interfere with his "good standing before the state bar." Martin's allegations are beside the point because he was never admitted to the New Jersey state bar.

Martin also states that he passed the Pennsylvania state bar examination, and he claims that he "was properly certified as a Pennsylvania lawyer." Although Martin passed the written portion of the bar examination, he has not been admitted to practice in Pennsylvania. This is borne out by the fact that although this court directed Martin to attach all relevant supporting documentation to his response to our show cause order. Martin did not attach a copy of a certificate of good standing from the Supreme Court of Pennsylvania. Nor could he; Martin is presently involved in litigation concerning his attempt to gain admission to the Pennsylvania state bar.

The court also directed Martin, if he is not a member of a state bar or is not admitted to practice before the

highest court of a state, to show cause why his membership in this court's bar should not be revoked. He argues that once an applicant to the bar of a federal court has been admitted to practice before that court, membership in the bar can be revoked only through formal suspension or disbarment proceedings with notice and a hearing. Suspension and disbarment proceedings involve the punishment of an *attorney* and require certain due process protections including notice and a chance to respond to the charges. *See Ruffalo,* 390 U.S. at 550. Here, Martin received notice that this court was considering revoking his bar membership and he was given an opportunity to explain his status. Martin's response reveals that he has never been admitted to any state bar. Thus, Martin is not entitled to an attorney disciplinary hearing because he is not an attorney facing suspension or disbarment. *See* 7 C.J.S. *Attorney & Client* § 26 (1980) ("[a]n order of admission, obtained by fraud or other means, may be corrected without proceedings for disbarment").

Finally, Martin argues, apparently in the alternative, that because there are many federal court practitioners who do not maintain their state bar memberships, his "membership in a state bar should not be interposed as an artificial issue" against him. Martin does not elucidate this point, and it is not necessary for this court to delve into the meaning and import of active and inactive status in a state bar. Without membership in a state bar or admission to practice before the highest court of a state, a federal court is without authority in the first instance to grant bar membership. *See* Fed.R.App.P. 46(a). Martin's membership in this court's bar was premised on his status as an attorney admitted to a state bar. He is not an

attorney admitted to a state bar. His admission here was granted in error, and his membership must be revoked.

Accordingly,

IT IS ORDERED THAT:

James Lee Martin's membership in the bar of this court is revoked.

6/20/97	/s/ Glenn L. Archer, Jr.
Date	Glenn L. Archer, Jr.
	Chief Judge

cc: James Lee Martin

United States Court of Appeals
for the Federal Circuit

MISCELLANEOUS NO. 510

IN RE JAMES LEE MARTIN
(an attorney admission matter),

Respondent,

ON PETITION FOR REHEARING

Before ARCHER, *Chief Judge, MAYER and MICHEL, Circuit Judges.*

ARCHER, *Chief Judge.*

ORDER

(Filed Aug. 1, 1997)

James Lee Martin (1) petitions for rehearing of the June 20, 1997 order of the Chief Judge and (2) moves to have the matter considered by a three-judge panel.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motion to have the matter considered by a three-judge panel of the court is granted. Circuit Judges Mayor and Michel join the June 20, 1997 order as amended herein.*

---

* Martin states that he learned that he passed the New Jersey bar examination in 1983, not 1984 as the June 20, 1997 order states. In order to avoid any possible inaccuracy, the phrase "had successfully completed the New Jersey bar examination and" at line 7, page 3 is deleted.

(2) The petition for rehearing is denied.

FOR THE COURT

AUG 1 1997
Date

/s/ Glenn L. Archer, Jr.
Glenn L. Archer, Jr.
Chief Judge

United States Court of Appeals
for the Federal Circuit

ORDER

(Filed Aug. 1, 1997)

A combined petition for rehearing and suggestion for rehearing in banc having been filed by the RESPONDENT, and the petition for rehearing having been referred to the panel that heard the appeal, and thereafter the suggestion for rehearing in banc having been referred to the circuit judges who are in regular active service,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED and it is further

ORDERED that the suggestion for rehearing in banc be, and the same hereby is, DECLINED,

FOR THE COURT,
JAN HORBALY, CLERK

Dated: August 1, 1997

By /s/ Alex Van Veen
Alex Van Veen
Staff Law Clerk

cc: JAMES L. MARTIN

IN RE JAMES L. MARTIN, 97-M510